



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/379,051	08/23/99	KUMF W	201804

LEYDIG VOIT & MAYER LTD  
TWO PRUDENTIAL PLAZA  
SUITE 4900  
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IM12/0915

EXAMINER  
CHANEY, C

ART UNIT PAPER NUMBER  
1745

DATE MAILED: 09/15/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.  
09/379,051Applicant(s)  
Kump et al.Examiner  
Carol ChaneyGroup Art Unit  
1745
☒ Responsive to communication(s) filed on 5-23-00
☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 1-9 is/are allowed.

☒ Claim(s) 10-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2, 5
☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

2. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

***Response to Amendment***

3. The amendments to the specification and claim 12 filed on 5-26-00 are improper. See M.P.E.P. 1453 and 37 CFR 1.121(b)(1-2). Note that amendments to the specification must be

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made by rewriting the entire paragraph. See 37 CFR 1.121(b)(1)i. Also, please note that a new claim added and later amended must still be entirely underlined. (See 37 CFR 1.121(b)(2)(i)(c)).

***Claim Rejections - 35 USC § 112***

4. The substance of applicants' amendments filed 5-23-2000 overcomes the rejection of claim 12 under 35 U.S.C. 112, second paragraph. The rejection of claim 12 under 35 U.S.C. 112, second paragraph would be overcome with the filing of a proper amendment.

5. Claims 11-17 recite the limitation "the battery". There is insufficient antecedent basis for this limitation in the claims. Claim 10 recites "a cell" which would be a component of a battery.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Stocchiero (US Patent 4,898,795) for reasons of record. The rejection is repeated below:

Stocchiero discloses lead-acid batteries which include "elastic and deformable pole seats." (Note column 2, lines 14-16.) As shown in Fig. 1, the battery cover includes a diaphragm portion which is an expandable portion of the cover. (Note Fig. 1, reference numeral 6.) The diaphragm will compress, or flex,

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as the grids age and lengthening of the pole occurs. (Note column 3, lines 47-57.) As may be seen in Figs. 1 and 2, the expandable cover area contains two regions. The first, illustrated as reference numeral 9, is substantially planar, and the second, illustrated at reference numeral 7, is corrugated, or sinusoidal, in cross section.

### ***Response to Arguments***

8. Applicant's arguments filed 5-23-00 have been fully considered but they are not persuasive.

Applicant argues "Nothing in the Stocchiero '795 reference indicates that either the shoulder-ring 9 or the corrugated, bellows-shaped walls 7 expands as grid growth occurs, as required by claim 10." However, instant claim 10 does not appear to require a cover area to expand as grid growth occurs. Claim 10 requires "an expandable cover area surrounding at least said terminal opening for said positive terminal, whereby said expandable cover area *may flex as grid growth occurs.*" (Emphasis added.) As applicants note, "Stocchiero specifically teaches that the tubular members surrounding the terminals are co-axially compressible as the(y) slide axially in response to grid growth." Thus, the cover area of the Stocchiero invention "may flex" in response to grid growth, since compression is a form of flexure. The corrugations in the cover described by Stocchiero cause it to be "an expandable cover area", even though applicants note the cover does not necessarily expand *in response to* grid growth.

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It is also noted that the courts have held that functional “whereby” statements do not define any structure, and accordingly cannot serve to distinguish over the prior art. See *In re Mason* (114 USPQ 127, 44 CCPA 937 (1957)).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carol Chaney whose telephone number is (703) 305-3777. The examiner can normally be reached on Monday-Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Stephen Kalafut, can be reached on (703) 308-0433. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

  
Carol Chaney  
Primary Examiner

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August 29, 2000